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20 *Michael Carlson*

21 **UNITED STATES DISTRICT COURT**
22 **SOUTHERN DISTRICT OF INDIANA**

23 MICHAEL CARLSON, : Civil Action No.: 1:22-cv-00345
24 v. Plaintiff, :
25 SMART FINANCIAL CREDIT : **COMPLAINT FOR DAMAGES**
26 UNION, : **PURSUANT TO THE FAIR**
27 Defendant. : **CREDIT REPORTING ACT, 15**
28 : **U.S.C. § 1681, ET SEQ.**
29 : **JURY TRIAL DEMANDED**
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1. The United States Congress has found the banking system is dependent upon
2 fair and accurate credit reporting. Inaccurate credit reports directly impair the
3 efficiency of the banking system, and unfair credit reporting methods
4 undermine the public confidence, which is essential to the continued
5 functioning of the banking system. Congress enacted the Fair Credit
6 Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), to ensure fair and accurate
7 reporting, promote efficiency in the banking system, and protect consumer
8 privacy. The FCRA seeks to ensure consumer reporting agencies exercise
9 their grave responsibilities with fairness, impartiality, and a respect for the
10 consumer’s right to privacy because consumer reporting agencies have
11 assumed such a vital role in assembling and evaluating consumer credit and
12 other information on consumers. The FCRA also imposes duties on the
13 sources that provide credit information to credit reporting agencies, called
14 “furnishers.”

20. Through a tightly wound set of procedural protections, the FCRA protects
21 consumers from the material risk of harms that otherwise flow from inaccurate
22 reporting. Thus, through the FCRA, Congress struck a balance between the
23 credit industry’s desire to base credit decisions on accurate information, and
24 consumers’ substantive right to protection from damage to reputation, shame,
25 mortification, and the emotional distress that naturally follows from
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1 inaccurate reporting of a consumer's fidelity to his or her financial
2 obligations.

3 3. Michael Carlson ("Plaintiff"), by Plaintiff's attorneys, brings this action
4 against Smart Financial Credit Union ("Smart Financial" or "Defendant") for
5 violations of the FCRA, as set forth below.

6 **JURISDICTION AND VENUE**

7 4. This Court has federal question jurisdiction because this case arises out of
8 violations of the FCRA. 15 U.S.C. § 1681 *et seq.*; 28 U.S.C. § 1331.

9 5. Venue is proper in the United States District Court for the District of Indiana
10 pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Madison
11 County, Indiana and because Defendant is subject to personal jurisdiction in
12 Madison County, Indiana; conducts business in Madison County, Indiana; the
13 events giving rise to this action occurred in Madison County, Indiana; and
14 Defendant is registered with the Indiana Secretary of State.

15 **PARTIES**

16 6. Plaintiff is a natural person residing in the County of Madison, State of Indiana.
17 In addition, Plaintiff is a "consumer" as that term is defined by 15 U.S.C. §
18 1681a(c).

19 7. Smart Financial is a corporation doing business in the State of Indiana.

8. Smart Financial is a furnisher of information as contemplated by 15 U.S.C. § 1681s-2(b) that regularly and in the ordinary course of business furnishes information to a consumer credit reporting agency.

9. Upon information and belief, in the course of its business Smart Financial furnished credit information about Plaintiff to credit reporting agencies, including Equifax, Experian, and Trans Union.

10. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of Defendant.

GENERAL ALLEGATIONS

11. On August 27, 2020, Plaintiff filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the Southern District of Indiana pursuant to 11 U.S.C. § 701 *et seq.* Plaintiff's case was assigned Case Number 20-04860-RLM ("Bankruptcy").

12. At the time of filing, Plaintiff owed a 2018 Toyota Tacoma (“Vehicle”). The Vehicle was subject to a loan (“Loan”) held by Smart Financial.

13. On November 10, 2020, Plaintiff and Smart Financial entered into a Reaffirmation Agreement (“Reaffirmation”), whereby Plaintiff agreed to continued making his regular monthly payments on the Loan. See Bankruptcy

1 ECF No. 15. As a result, the Loan was not discharged in the Bankruptcy. *See*
2 Plaintiff's Discharge at Bankruptcy ECF No. 17, which stated "debts covered
3 by a valid reaffirmation agreement are not discharged."

4 14. However, Defendant reported derogatory, inaccurate, or misleading
5 information after the Bankruptcy.

6 15. Additionally, Defendant's inaccurate reporting did not comply with industry
7 standard. The Consumer Data Industry Association ("CDIA") provides
8 reporting standards and guidelines to assist furnishers of information and
9 credit reporting agencies with their compliance requirements under the FCRA
10 and published and implemented the Metro 2 Format reporting standards
11 ("Metro 2 Format").

12 16. The CDIA publishes the Metro 2 reporting standards to assist furnishers (like
13 Defendant) with their compliance requirements under the FCRA.

14 17. A furnisher's failure to follow industry reporting guidelines may establish
15 materially misleading reporting where (1) the furnisher adopts the standard,
16 (2) the furnisher deviated from the standard, and (3) this "deviation might
17 adversely affect credit decisions—in other words, that entit[ies] would have
18 expected [the defendant furnisher] to report in compliance with the [CRRG]
19 guidelines." *Nissou-Rabban v. Capital One Bank (USA)*, No. 15-cv-1675 JLS
20 (DHB), 2016 WL 4508241, at *5 (S.D. Cal. June 6, 2016) (citations and
21 22 23 24 25 26 27 28

1 quotations omitted). *See also Wylie v. Experian, LLC*, No. 16-cv-102, 2017
2 WL 835205, at *5-7 (W.D. Pa. Mar. 2, 2017).

3 18. On information and belief, Defendant adopted the Metro 2 Format reporting
4 standards, and at all times relevant implemented the Metro 2 Format as an
5 integral aspect of its duties under FCRA, which require adequate and
6 reasonable policies and procedures be in place to handle investigations of
7 disputed information.

8 19. Despite Metro 2 Format's instructions, Smart Financial failed to conform to
9 the Metro 2 Format when reporting on Plaintiff's account after the Bankruptcy
10 and Reaffirmation, as further set forth below.

11 20. To this end, the adverse reporting on Plaintiff's consumer report departed
12 from the credit industry's own reporting standards and was not only
13 inaccurate, but also materially misleading under the CDIA's standards as well.

14 21. A "materially misleading" statement is more than just inaccuracies in
15 reported information. It also includes omissions that cause reported
16 information to be misleading or that create misperceptions about otherwise
17 factually accurate data.

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Smart Financial Misreported Credit Information

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on Plaintiff's Equifax Report

3 22. In an Equifax credit report dated March 24, 2021, Smart Financial
 4 inaccurately reported the Loan as “Account Included in Bankruptcy”, and
 5 failed to report any of Plaintiff's ongoing monthly payments on the Loan after
 6 the Reaffirmation was filed, as seen below.
 7

8

9

10

SMART FINANCIAL CREDIT UNION - PO BOX 920719 HOUSTON TX 77292-0719 : 7138501600														
Account Number	Date Opened		High Credit	Credit Limit	Terms Duration		Terms Frequency		Months Revd	Activity Designator		Creditor Classification		
████████████████████	08/02/2019								16					
Initial Report Date Reported 12/31/2020	Balance Amount: Past Due	Amount: Payment	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of 1st Delinquency 08/2020	Date of Last Activity	Date Mai Del 1st Reported 08/2020	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Date	Date Closed	

11 Status - Account Included In Bankruptcy; Type of Loan - Auto; Whose Account - Joint Account; ADDITIONAL INFORMATION - Bankruptcy Chapter 7; Auto; Bankruptcy Petition; Fixed Rate;

12 23. On or about May 28, 2021, Plaintiff disputed Smart Financial's reported
 13 information regarding its reported obligation pursuant to 15 U.S.C. §
 14 1681i(a)(2) by notifying Equifax, in writing, of the incorrect and inaccurate
 15 credit information furnished by Smart Financial.
 16

17 24. Specifically, Plaintiff sent a letter to Equifax (“Equifax Dispute Letter”),
 18 requesting the above inaccurate and incorrect derogatory information be
 19 removed, corrected, or deleted.
 20

21 25. Upon information and belief, upon receiving the Equifax Dispute Letter,
 22 Equifax timely notified Smart Financial of the dispute based on its mandated
 23 statutory duty pursuant to 15 U.S.C. § 1681i.
 24

25 26. Smart Financial was required to conduct an investigation into this specific
 26 account on Plaintiff's consumer report pursuant to 15 U.S.C. § 1681s-2(b).
 27

27. While Equifax failed to provide a reinvestigation to Plaintiff, Plaintiff obtained an Equifax credit report, dated July 28, 2021, in which Smart Financial continued misreporting the reaffirmed Loan, now reporting it as closed and failing to report Plaintiff's monthly payments as seen below:

4.10 SMART FINANCIAL CREDIT UNION (CLOSED)

Summary

Your debt-to-credit ratio represents the amount of credit you're using and generally makes up a percentage of your credit score. It's calculated by dividing an account reported balance by its credit limit.

Account Number		Reported Balance
Account Status	PAYS_AS AGREED	Debt-to-Credit Ratio
Available Credit		

Account History

The tables below show up to 2 years of the monthly balance, available credit, scheduled payment, date of last payment, high credit, credit limit, amount past due, acti designator, and comments.

Balance

28. A reasonable investigation by Smart Financial would have correctly reported Plaintiff's account, and reported Plaintiff's ongoing monthly payments thereon.

29. Additionally, Plaintiff has suffered concrete and imminent harm to his creditworthiness. Plaintiff's Equifax reports showed numerous third parties had procured his credit information both prior and subsequent to the reinvestigation. Moreover, prospective creditors who wished to make a firm offer of credit or insurance to Plaintiff may have excluded him from lists of

1 consumers who received such offers, or else would have factored the
 2 inaccurate and confusing information into the terms of any firm offer they
 3 decided to extend to Plaintiff. Thus, the inclusion of derogatory information
 4 presents an imminent, material risk of harm Plaintiff's creditworthiness has
 5 been, and continues to be, damaged.

7

8 **Smart Financial Misreported Credit Information**

9 **on Plaintiff's Experian Report**

10 30. In an Experian credit report dated March 24, 2021, Smart Financial
 11 inaccurately reported Plaintiff's account as "Discharged through Bankruptcy
 12 Chapter 7", and failed to report any of Plaintiff's ongoing monthly payments
 13 on the Loan after the Reaffirmation was filed, as seen below.



22 31. On or about May 28, 2021, Plaintiff disputed Smart Financial's reported
 23 information regarding its reported obligation pursuant to 15 U.S.C. §
 24 1681i(a)(2) by notifying Experian, in writing, of the incorrect and inaccurate
 25 credit information furnished by Smart Financial.

26

27

28

32. Specifically, Plaintiff sent a letter to Experian (“Experian Dispute Letter”), requesting the above inaccurate and incorrect derogatory information be removed, corrected, or deleted.

33. Upon information and belief, upon receiving the Experian Dispute Letter, Experian timely notified Smart Financial of the dispute based on its mandated statutory duty pursuant to 15 U.S.C. § 1681i.

34. Smart Financial was required to conduct an investigation into this specific account on Plaintiff's consumer report pursuant to 15 U.S.C. § 1681s-2(b).

35. While Experian failed to provide a reinvestigation to Plaintiff, Plaintiff obtained an Experian credit report, dated July 28, 2021, in which Smart Financial continued misreporting the reaffirmed Loan, continuing to report it as “Discharged through Bankruptcy Chapter 7” and failing to report Plaintiff’s monthly payments as seen below:

1 ● SMART FINANCIAL CREDIT UNION
2 Potentially Negative ▼

4 https://usa.experian.com/acr/report

7/28/21, 2:11 PM
Page 14 of 37

7 Date Opened Balance Status
8 08/02/2019 - Discharged through Bankruptcy Chapter 7/Never late.

9 Do you see information you believe to be inaccurate? Start a Dispute

11
12 36. A reasonable investigation by Smart Financial would have correctly reported
13 Plaintiff's account, and reported Plaintiff's ongoing monthly payments
14 thereon.

16 37. Additionally, Plaintiff has suffered concrete and imminent harm to his
17 creditworthiness. Plaintiff's Experian reports showed numerous third parties
18 had procured his credit information both prior and subsequent to the
19 reinvestigation. Moreover, prospective creditors who wished to make a firm
20 offer of credit or insurance to Plaintiff may have excluded him from lists of
21 consumers who received such offers, or else would have factored the
22 inaccurate and confusing information into the terms of any firm offer they
23 decided to extend to Plaintiff. Thus, the inclusion of derogatory information

1 presents an imminent, material risk of harm Plaintiff's creditworthiness has
 2 been, and continues to be, damaged.

3 **Smart Financial Misreported Credit Information**
 4
 5 **on Plaintiff's Trans Union Report**

6 38. In a Trans Union credit report dated March 24, 2021, Smart Financial failed
 7 to report any of Plaintiff's ongoing monthly payments on the Loan after the
 8 Reaffirmation was filed, as seen below.

SMART FINANCIAL CREDIT UNION #	[REDACTED]	PO BOX 920719, HOUSTON, TX 77292-0719, (713) 850-1600										
Date Opened:	08/02/2019	Balance:										
Responsibility:	Joint Account	Date Updated:	12/31/2020									
Account Type:	Installment Account	Last Payment Made:	12/18/2020									
Loan Type:	AUTOMOBILE	High Balance:	\$33,603									
Remarks:	CHAPTER 7 BANKR/JPTCY											
Estimated month and year that this item will be removed: 08/2027												
Rating	OK	OK	OK									
	11/2020	10/2020	09/2020	08/2020	07/2020	06/2020	05/2020	04/2020	03/2020	02/2020	01/2020	12/2019
	11/2019	10/2019	09/2019	08/2019								
Rating	OK	OK	OK	OK								

15 39. On or about May 24, 2021, Plaintiff disputed Smart Financial's reported
 16 information regarding its reported obligation pursuant to 15 U.S.C. §
 17 1681i(a)(2) by notifying Trans Union, in writing, of the incorrect and
 18 inaccurate credit information furnished by Smart Financial.

20 40. Specifically, Plaintiff sent a letter to Trans Union ("Trans Union Dispute
 21 Letter"), requesting the above inaccurate and incorrect derogatory information
 22 be removed, corrected, or deleted.

25 41. Upon information and belief, upon receiving the Trans Union Dispute Letter,
 26 Trans Union timely notified Smart Financial of the dispute based on its
 27 mandated statutory duty pursuant to 15 U.S.C. § 1681i.

1 42. Smart Financial was required to conduct an investigation into this specific
 2 account on Plaintiff's consumer report pursuant to 15 U.S.C. § 1681s-2(b).

3 43. While Trans Union failed to provide a reinvestigation to Plaintiff, Plaintiff
 4 obtained a Trans Union credit report, dated July 28, 2021, in which Smart
 5 Financial continued misreporting the reaffirmed Loan, still failing to report
 6 Plaintiff's monthly payments as seen below:

7 **SMART FINANCIAL CREDIT UNION # [REDACTED]**

8 PO BOX 920719
 9 HOUSTON, TX 77292-0719
 10 (713) 850-1600

Date Opened:	08/02/2019	Balance:		Pay Status:	Current Account
Responsibility:	Joint Account	Date Updated:	12/31/2020		
Account Type:	Installment Account	Last Payment Made:	12/18/2020		
		High Balance:	\$33,603		

11 Loan Type: AUTOMOBILE

12 Remarks: CHAPTER 7 BANKRUPTCY

13 Estimated month and year that this item will be removed: 08/2027

	11/2020	10/2020	09/2020	08/2020	07/2020	06/2020	05/2020	04/2020	03/2020	02/2020
Rating	OK									
	01/2020	12/2019	11/2019	10/2019	09/2019	08/2019				
Rating	OK	OK	OK	OK	OK	OK				

14 44. A reasonable investigation by Smart Financial would have correctly reported
 15 Plaintiff's account, and reported Plaintiff's ongoing monthly payments
 16 thereon.

17 45. Additionally, Plaintiff has suffered concrete and imminent harm to his
 18 creditworthiness. Plaintiff's Trans Union reports showed numerous third
 19 parties had procured his credit information both prior and subsequent to the
 20 reinvestigation. Moreover, prospective creditors who wished to make a firm
 21 offer of credit or insurance to Plaintiff may have excluded him from lists of
 22

consumers who received such offers, or else would have factored the inaccurate and confusing information into the terms of any firm offer they decided to extend to Plaintiff. Thus, the inclusion of derogatory information presents an imminent, material risk of harm Plaintiff's creditworthiness has been, and continues to be, damaged.

FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681 ET SEQ. (FCRA)

46. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

47. Defendant failed to comply with industry standards. Defendant failed to comply with the Metro 2 Format instructions and reported inaccurate information.

48. Not only was Defendant's reporting inaccurate and a departure from the credit industry's own reporting standards, Defendant's reporting was also materially misleading under the CDIA's standards as well.

49. A "materially misleading" statement is concerned with more than just an inaccurate statement. It also includes omissions to credit entries, which in context create misperceptions about otherwise factually accurate data.

- 1 50. Defendant failed to conduct a reasonable investigation as required by 15
2 U.S.C. § 1681s-2(b)(1)(A), and wrongly verified inaccurate information in
3 connection with Plaintiff's credit reports.
- 4 51. Defendant failed to review all relevant information provided by Plaintiff in
6 the respective Dispute Letters, as required by and in violation of 15 U.S.C. §
7 1681s-2(b).
- 8 52. Defendant re-reported the inaccurate derogatory information on Plaintiff's
9 report. Specifically, Defendant still reported the Loan as included in the
10 Bankruptcy and failed to report any of Plaintiff's ongoing monthly
11 payments after the Reaffirmation.
- 12 53. Upon receipt of Plaintiff's disputes, Defendant failed to conduct an
13 investigation with respect to the disputed information as required by 15 U.S.C.
14 § 1681s-2(b)(1)(B).
- 15 54. Due to Defendant's failure to reasonably investigate Plaintiff's dispute, it
16 further failed to correct and update Plaintiff's information as required by 15
17 U.S.C. § 1681s-2(b)(1)(E), thereby causing continued reporting of inaccurate
18 information in violation of 15 U.S.C. § 1681s-2(b)(1)(C).
- 19 55. Despite Plaintiff's efforts to correct Defendant's erroneous and negative
20 reporting in writing, Defendant neglected, refused, or failed to do so.
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56. Defendant's continued inaccurate and negative reporting of the Debts in light of its knowledge of the actual error was willful. Plaintiff is, accordingly, eligible for statutory damages.

57. Also as a result of Defendant's continued inaccurate and negative reporting, Plaintiff has suffered actual damages, including without limitation fear of credit denials, out-of-pocket expenses in challenging Defendant's wrongful representations, damage to his creditworthiness, and emotional distress. Further, unaffiliated third parties have accessed Plaintiff's credit reports containing Defendant's misreporting of the Loan, thus further damaging Plaintiff's credit availability and potentially excluding Plaintiff from offers of credit which would otherwise have been made.

58. By inaccurately reporting account information relating to the reaffirmed Loan after notice and confirmation of its errors, Defendant failed to take the appropriate measures as required under 15 U.S.C. § 1681-s(2)(b)(1)(D) and (E).

59. The foregoing acts and omissions constitute numerous and multiple willful, reckless, or negligent violations of the FCRA, including but not limited to each and every one of the above-cited provisions of the FCRA, 15 U.S.C. § 1681.

60. As a result of each and every willful violation of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(1); statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from Defendant.

61. As a result of each and every negligent noncompliance of the FCRA, Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. § 1681o(a)(1); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681o(a)(2) from Defendant.

PRAYER FOR RELIEF

Plaintiff respectfully requests the Court grant Plaintiff the following relief against Defendant:

**FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681 ET SEQ. (FCRA)**

- actual damages pursuant to 15 U.S.C. § 1681n(a)(1);
 - statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
 - punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2);

- costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1) against Defendant for each incident of negligent noncompliance of the FCRA; and
 - any other relief the Court may deem just and proper.

TRIAL BY JURY

62. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: February 17, 2022

Respectfully submitted,

By /s/ David Krieger, Esq.
David Krieger, Esq.
Nevada Bar No. 9086
Shawn Miller, Esq.
Nevada Bar No. 7825
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